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May 20, 2003

TO: Public Disclosure Commission

FROM: Nancy Krier, Assistant Attorney General *mk*
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SUBJECT: **Updating PDC Enforcement Hearing (Adjudicative Proceeding) Rules – Chapter 390-37 WAC**

This memorandum addresses a suggestion to initiate rulemaking to update the Public Disclosure Commission's enforcement hearing (adjudicative proceeding) rules. This suggestion will be discussed at the Commission's May 27, 2003 meeting. Assistant Director Susan Harris and I will be available to answer questions.

All the Commission's current rules in chapter 390-37 WAC are attached. The proposals for new rules and amended rules are detailed in that attachment, along with statutory and regulatory cross-references, and comments. As an overview, some rules are proposed to be amended to make them more closely reflect current practices. Some rules are proposed to be amended to address the current Administrative Procedure Act at chapter 34.05 RCW, which governs agency hearings under the APA. Some rules are proposed to be amended to address case law. Some new rules are proposed to explain or clarify current practices. One rule has no suggested changes. No rules are proposed for repeal.

Of particular consideration are the following:

Proposed new rule – WAC 390-37-000 – Explaining the PDC's jurisdiction, and that it does not hear public records disputes over which the superior courts have exclusive jurisdiction.

WAC 390-37-010 – Proposed amendment to encourage participants to consider alternative resolution or partial resolution procedures.

WAC 390-37-030 – Proposed amendment to reflect case law developments on citizen action complaints.

Proposed new rule – WAC 390-37-041 – Explaining the tolling provisions set out in case law for citizen action complaints, and to explain the Commission's options.

WAC 390-37-090 – Proposed amendment explaining stipulations and settlements, encouraging resolution of cases without further litigation where appropriate, and stating what the presumption



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will be if the Commission directs a sanction or other step as the result of a stipulated agreement and when no objection is lodged.

WAC 390-37-100 – Proposed amendment explaining more details of hearing procedures.

Proposed new rule - WAC 390-37-103 – Explaining current practices and statutes upon Commission receipt of alleged violations.

WAC 390-37-105 – Proposed amendment explaining prehearing conference procedures.

WAC 390-37-140 – Proposed amendment providing reference to penalty schedules for brief adjudicative proceedings.

WAC 390-37-144 - Proposed amendment explaining how the Commission will hear reviews from brief adjudicative proceedings when the statutory time periods have expired, but when a reconsideration option is still available.

WAC 390-37-150 – Proposed amendment explaining the criteria for reconsiderations.

Proposed new rules (unnumbered) – Placeholder for penalty schedules.

Some of the proposed rule changes in the attached may be appropriate for expedited adoption.

Thank you.

Enclosures

Cc: Vicki Rippie, Executive Director
Susan Harris, Assistant Director
Linda Dalton, Senior Assistant Attorney General